

18. Because the court in rendering the decision in said case, and in the 17th head note and in the 17th division of the opinion, held (as the head note reads): "From the evidence, the court is authorized to find that the jury was not influenced to render other than true answers to the questions propounded," by a loud cheering from persons on the outside of the courthouse which took place while the polling of the jury was being taken; and further on, in the body of the opinion, under division 17, the court use the following language upon this same subject: "We think that the affidavits of jurors submitted in regard to this occurrence was sufficient to show that there was no likelihood that there was any such result. Under such circumstances we do not think that the occurrence complained of amounts to more than an irregularity which was not prejudicial to the accused."

The plaintiff in error respectfully submits that the court rendering this decision, overlooked the case of Collier vs the State, reported in 115 Ga., page 803; and in said Collier case the disorder occurred in the hearing of the jury, and in the language of the Collier decision: "Each one of the jurors who tried the case testified by affidavit and they all agreed in the statement that they were not influenced by any demonstration; that the noise in the courthouse yard had no effect upon them as jurors; and that they were controlled alone by the evidence in the case and endeavored to return a proper verdict and they continued of the opinion that they had done so." The Collier case proceeds to recite further evidence of the jurors, - all tending to show that they were not influenced by the demonstration, - and the two court bailiffs likewise made affidavits. In the Collier decision it was held broadly, as the head note reads - that the plaintiff in error did not have a fair and impartial trial in the manner contemplated by law, which is guaranteed to him by the constitution of this state; and that whether the verdict was or was not supported by the evidence, it should, for that reason be set aside, and the court on page 808 of the decision, say: "It would be mere idle talk to say that the jurors did not understand that the demonstration was against the prisoner on trial. It is true that each of the jurors testified that the noise and demonstration made by this crowd did not affect his verdict." Further on, in the same decision, on the same page, the court say: "We have no reason to, and do not doubt that each member of the jury who testified was sincere and honest